IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-100494 C-100495
Plaintiff-Appellant,	:	TRIAL NO. 10TRC-15898
vs.	:	*JUDGMENT ENTRY.*
ALLISON VAUGHN,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Plaintiff-appellant, the state of Ohio, appeals the judgment of the Hamilton County Municipal Court granting defendant-appellee Allison Vaughn's motion to suppress filed in her prosecution for driving under the influence of alcohol pursuant to R.C. 4511.19(A)(1)(a). Because we conclude that the trooper did not have probable cause to arrest Vaughn, we affirm.

At approximately 2:30 a.m. on March 29, 2010, Ohio State Trooper Nathan Pabin observed Vaughn speeding on Delta Avenue. Using his radar device, Trooper Pabin clocked Vaughn's vehicle traveling 45 to 46 miles per hour in a 35-mile-per-hour zone. Once Trooper Pabin activated his lights and began following Vaughn, she immediately pulled over to the curb. Vaughn properly used her turn signal.

Trooper Pabin approached Vaughn's vehicle and asked Vaughn for her license, registration, and proof of insurance. He also told Vaughn that he had

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

stopped her for speeding. Vaughn gave Trooper Pabin her license without difficulty, but Trooper Pabin testified that Vaughn looked for her insurance and registration in her glove box, and that "she never actually looked through the papers. She just placed them back in the glove box and kept reaching around in different corners of the vehicle. Twice, she had reached under her seat * * * ."[2] Vaughn also asked Trooper Pabin if he had stopped her for speeding, when he had already told Vaughn that she had been speeding.

Trooper Pabin noticed a strong odor of alcohol on Vaughn's breath, and her eyes were glassy. Moreover, Vaughn had chewing gum in her mouth, and Trooper Pabin observed a recently extinguished cigarette in her vehicle's console. Vaughn denied drinking alcohol when asked, and she did not have slurred speech.

Trooper Pabin requested that Vaughn exit from her vehicle. Vaughn refused. Trooper Pabin then told Vaughn that he was placing her under arrest for driving under the influence of alcohol pursuant to R.C. 4511.19(A)(1)(a).

The trial court held a hearing on Vaughn's motion to suppress for lack of probable cause to arrest. Trooper Pabin testified at the hearing, and the trial court viewed a recording from Trooper Pabin's in-cruiser camera of Vaughn's stop and arrest. After considering the evidence and arguments presented, the trial court granted Vaughn's motion.

The state, in its sole assignment of error, now argues that the trial court erred in granting Vaughn's motion to suppress. The state argues that the trial court incorrectly determined that Trooper Pabin lacked probable cause to arrest Vaughn for a violation of R.C. 4511.19(A)(1)(a). "The legal standard for determining whether

[2] T.p. 13.

a law enforcement officer had probable cause to arrest an individual for OVI is whether, 'at the moment of the arrest, the police had sufficient information, derived from a reasonably trustworthy source of facts and circumstances, sufficient to cause a prudent person to believe that the suspect was driving under the influence.' "[3]

Appellate review of the trial court's judgment in this case requires a two-step process.[4] This court must review the trial court's findings of fact for clear error, giving deference to the trial court's inferences drawn from those facts.[5] Then, this court must make a de novo determination as to whether the facts established probable cause to arrest.[6]

The trial court found the following facts relevant to the issue of probable cause: (1) Vaughn had been traveling in her vehicle at 45 m.p.h. in a 35-m.p.h. zone; (2) Vaughn had used her turn signal to stop appropriately when pulled over by Trooper Pabin; (3) Trooper Pabin had smelled a strong odor of alcohol on Vaughn's breath; (4) Vaughn had denied drinking; (5) Trooper Pabin had noticed that Vaughn had glassy eyes; (6) Vaughn had not slurred her speech; (7) Vaughn had followed all of Trooper Pabin's directions, except his instruction to get out of the vehicle; (8) Vaughn had given Trooper Pabin her license when asked.

Based upon the record before us, the trial court's findings of fact were not clearly erroneous.

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[3] *Cincinnati v. Bryant*, 1st Dist. No. C-090546, 2010-Ohio-4474, at ¶15, quoting *State v. Homan*, 89 Ohio St.3d 421, 427, 2000-Ohio-212, 732 N.E.2d 952.
[4] *Bryant*, 2010-Ohio-4474, at ¶16.
[5] Id.
[6] Id.

We next conduct a de novo review to determine whether the facts found by the trial court established probable cause to arrest Vaughn. In *State v. Taylor*,[7] this court determined that "[t]he act of speeding at a nominal excess coupled with the arresting officers' perception of the odor of alcohol, and *nothing more*, did not furnish probable cause to arrest the defendant for driving under the influence." In reaching this conclusion, we also observed that nominal speeding, without any other indication of impaired driving, was not corroborative evidence of intoxication.[8] Thus, this court affirmed the trial court's judgment granting the defendant's motion to suppress.[9]

By contrast, in *Cincinnati v. Bryant*,[10] this court determined that the trial court had improperly granted a motion to suppress where the defendant had backed down a one-way street, and had difficulty locating his insurance card; the defendant's eyes were watery and glazed over; the officer had smelled a moderate odor of alcohol on the defendant; the defendant had admitted to consuming alcohol; and the defendant had slurred speech. This court reasoned that "[i]n this case, the traffic violation–backing out of a one-way street–is more suggestive of impairment than the nominal speeding at issue in *Taylor*."[11]

Based upon the facts and circumstances in this case, we hold that Trooper Pabin lacked probable cause to arrest Vaughn for a violation of R.C. 4511.19(A)(1)(a). Under *Taylor*, Vaughn's nominal speeding was not corroborative evidence of intoxication. And with no other indication of impaired driving, at the time of

[7] (1991), 3 Ohio App.3d 197, 197-198, 444 N.E.2d 481 (emphasis in original).
[8] Id.
[9] Id. at 198.
[10] 1st Dist. No. C-090546, 2010-Ohio-4474.
[11] Id. at ¶27.

Vaughn's arrest, Trooper Pabin lacked sufficient information that would have caused a prudent person to believe that Vaughn was driving under the influence. Therefore, we overrule the state's single assignment of error.

We affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HILDEBRANDT and **FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on March 18, 2011

per order of the Court _____.
Presiding Judge